S. Kanara. 1

1954 **File No.** 54.

Legal

Examined

E **DEPARTMENT BRANCH**

Subject:— Suits --- Kanara

C. S. No. 100 of 1953.

Smt. Laxmibai Narayan Wagle — Plff

V/s

The State of Bombay and another. — Defts

Re: For the declaration that the plaintiff is entitled by virtue of ancient and immemorial to discharge rain water from her land bearing Survey No. 65/5 thro' one Mrs Radhabai Sohani's plot No. 65/4 thro the outlet in the jail compound adjoining defendant No. 1's plot into the jail fields

P. 44 E

File No. S. Kanara 1/54

Std. Scott. Slip 24-B

1/54

EXPRESS: [illegible]

To

The Collector,
Kanara.

No. BLD/25 of 1953. Poona-1. Dt. -6-1953.

Subject: Civil Suit No. 100/53 of the Court of Civil Judge, S.Dn. Karwar against Government filed by Laxmibai Narayan Wagle of Karwar in connexion with passage of rain water from Jail fields adjoining Jail compound wall, Karwar.

Reference: Your letter No. [illegible].6289[pt] Dt. 11-6-1953.

No action on the notice was required as Government have been made only a formal party. The matter is being referred to the Remembrancer of Legal Affairs for his further advise regarding defence of the suit.

SD/- (A.K.DESHPANDE)

INSPECTOR GENERAL OF PRISONS
STATE OF BOMBAY

[illegible]

T/DGK:

P.T.O.

EXPRESS

No. BLD/25 of 1953.
INSPECTOR GENERAL OF PRISONS' OFFICE.
Poona-1. Dt. 18-6-1953.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay, with the copy of the ~~plaintiff~~ plaint.

2. The facts of the case have been detailed by the plaintiff together with the reason why Government have been made a party. It is presumed no defence is to be put in. I may however be advised as to the action if any to be taken.

LEGAL DEPARTMENT
19 JUN 1953

P.... 18/6

FOR INSPECTOR GENERAL OF PRISONS
STATE OF BOMBAY

(C.C.S.) THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No.
Sub No. 15041
Branch G to 653

Submitted for orders
18/6

In the Court of the Civil Judge,
Senior Division, Karwar.

Original Suit No. 100 of 1953.

Shrimati Lakshmibai Narayan Wagle,
age 67, Hindu, profession household
work, residing at Karwar in
Karwar Taluka. Plaintiff.

versus

1. Shri. Mulla Hussain Mulla Usman,
age 55, Muslim, Merchant, residing
at Karwar in Karwar Taluka.

2. The Government of the Bombay State,
Bombay. ... ... Defendants.

Claim Rs. 5 for court fee.

The plaintiff, abovenamed, states as follows :-

1. The plaintiff abovenamed lives at Kajubag, Karwar. She is the owner of Baad Gram Survey No. 65/4 (old) now 65/5 and resides in her own house built therein. The Defendant No. 1 Shri. Mulla Hussain resides in his own house the standing in Baad Gram survey No. 65/3 of which is situated in the same survey number 65 Baad Gram to the north of the plaintiff's said house and the surrounding compound. To the south of the plaintiff's plot, reside other land-lords and their tenants, while to the west, stands the Government Jail compound wall. This Jail compound wall extends upto the Jail approach road in the north. The plaintiff's said plot Baad Gram Survey No. 65/4(old) but now 65/5, Mrs. Radhabai Sohoni's plot 65/4 and the said plot s.no. 65/3 belonging to the defendant No. 1, adjoin one another and form part of the one and the same survey number 65, Baad Gram.

2. In the rainy season from times immemorial the rain water passes from the southern side of the said sameSurvey No. 65, i.e. from s.no. 65/5 owned by the plaintiff through the adjoining 65/4 belonging to mrs. Radhabai Sohoni and on to the survey No. 65/3 in the north belonging to the defendant No. 1 and thence taking its course to the west it passes on through the outlet kept in the jail compound wall adjoining defendant no. 1's land, to the Jail fields, from where it flows through the canal on to the sea side.

3. About the month of May of the year 1950, defendant no. 1 put up a compound wall from east to the west of his said land and this had the effect of blocking the said rain water-course in June 1950, with the result that the plaintiff's said land as well as the lands lying to the south were inundated with rain water, and the residential houses of the plaintiff and others were in great danger. When the plaintiff protested to the defendant no. 1 against this, at the time of putting up the stone wall, defendant no. 1 gave an assurance to the plaintiff that he would arrange for keeping an outlet for the said water-course, which he did not keep. The Government Jail authorities, having been thereafter in June 1950 approached by the Plaintiff and her neighbours for giving an outlet to the rain water, they were kind enough to do so by opening a new outlet in the said Jail compound wall for the water being discharged into the jail fields from the said s.no.65/5. But in June 1951 the Jail authorities closed the outlet but on representation being made to the authorities concerned, it was reopened only for fifteen days and was again closed. This resulted in the clogging of rain water and consequently destroying in 1951 the plantations in the plaintiff's compound and in the compounds of the neighbours and creating dampness in their houses and causing harm to their health and property.

4. Thereafter in November 1951 a legal notice was given to defendant No. 1 by the plaintiff calling upon him to facilitate the running of the rain water in the rainy season

along its ancient and customary course and not to do any thing to block the said water-course to which the plaintiff has an ancient, natural and customary right, but the said defendant no. 1 did not send any reply to it, nor did he comply with notice.

5. In the correspondence that ensued between the plaint-iff's husband Shri. Narayanrao Purushottam Wagle and the jail authorities, in regard to the matter of the Govt joining the plaintiff as a co-plaintiff or a defendant in the proposed suit to be filed against defendant no. 1, the Inspector General of Prisons, Bombay State, in his reply dt. 14-4-1952 informed the plaintiff that the Govt of Bombay had permitted the department concerned to be made a formal defendant.

6. The plaintiff, therefore, gave the Government of Bombay a legal notice dated 19th September 1952 of two months under section 80 of the Civil Procedure Code stating all the above-mentioned facts and intimating to them that the Govt would ~~have t~~ be made a formal codefendant, in the proposed suit principally against the said defendant no. 1. As the Government Jail Property is vitally concerned as mentioned above in the said rain water course the Govt of Bombay is added as a party to this suit.

7. The cause of action for this suit arose on or about the 1st of June 1950 when the rain water course was obstructed by the defendant no. 1 as stated above.

8. As the cause of action arose within the jurisdiction of this Court and the parties also reside within the jurisdiction of this Court this Court is competent to try this suit.

9. It is, therefore, prayed

1. That a declaration be made by this Court that the said plaintiff is entitled by virtue of ancient and immemorial right to dis-charge the rain water from her land, Baad Gram Survey No. 65/4(old) but now 65/5, through Mrs. Radhabai Sohoni's plot s.no.65/4 on to the plot belonging to defendant No.1 Baad Gram Survey No. 65/3 and then onwards through the outlet in the Jail compound, adjoining defendant No. 1's plot, into the Jail fields belong-ing to defendant No. 2
and consequently

1 A perpetual injunction be granted restraining
A defendant No. 1 from obstructing, in any way, the plaintiff's exercising the said ancient and immemorial right to discharge the rain water in the above-said manner.

10. A mandatory injunction ordering the defendant No. 1 to give a sufficiently wide outlet through his compound wall for the rain water to be discharged from the plaintiff's said land through Mrs. Radhabai's adjoining land on to the land Baad Gram s.no.65/3 and remove any obstruction that he has put up in the way of the said water-course. Valuation Rs. 5 for court-fee stamp in respect of the ~~Jail~~ said declaration and the consequent two injunctions.

KARWAR : Dt. 18-4-53. (L.H.I.) LAKSHMIBAI
THE SAID PLAINTIFF.

TRUE COPY

Advocate
: Sd/- D.M. Kulkarni

No. 13650/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 25th June 1953.

To

The Inspector General of Prisons,
State of Bombay.

Subject:- Karwar C.S. No. 100/53.
Laxmibai Narayan Wagle.
vs.
The State of Bombay.

Sir,

With reference to his endorsement No. BLD/25 dated the 18th June 1953 on the subject noted above, I have the honour to request you to send a full report under rule 118 of the Law Officers Rules.

Yours faithfully,

for Remembrancer of Legal Affairs.

BM.
24.6.

Submitted for signature
24/6
Dol(M)

Await report under Rule 118

26/6

26.6.53

Regd AD

From

The Inspector General of Prisons,
State of Bombay, Poona-1.

LETTER: 71

To

The Remembrancer of Legal Affairs,.
BOMBAY ~~DIVISION.~~ No 1

No. BLD/25 of 1963. Poona-1. Dt. 11-7-1953.

Subject. :Karwar C.S.No. 100/53 Laxmibai Narayan Wagle
vs
The State of Bombay.

Reference: Your letter No. 13650/F.2. Dt. 25-6-1953.

A report under Rule 118 of the Law Officers Rules is sent herewith.

2. As no consent was given by this Department to make Government even a formal party as alleged by the plaintiff in the suit, the plaintiff should be made liable to pay the cost of Government.

L.D. 13 JUL 1953

I.A.
INSPECTOR GENERAL OF PRISONS
STATE OF BOMBAY

O.C. SIGNED BY DEPARTMENT

T/DGK:

C

Suit No. 16999.

Exhibit E.14-7-53

No. 23531/E . 9/11
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 23.xi. 1953.

Subject:- Kavara Civil Suit
No. 100 of 1953.

MEMORANDUM:

The District Government Pleader, Kavara, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance.

Papers of the case in one bundle received from the Collector accompany.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kavara, at Karwar

Submitted & replied
24/11
Solpot

G.R. L.D. No. 101 HH/E dt. 20/4/54.

Sent to Press on 27/4/54.

From:—

The District Government Pleader, Kanara.

To:

The Remembrancer of Legal Affairs, Bombay.

L.D. 7 - DEC 1953

No. 810 of 1953. Karwar, dated 4th December 1953.

Sir,

I am in receipt of your letter No. 23531 dated 23-11-1953 together with its accompaniments. I have sent the draft written statement herewith. It may please be approved after making necessary changes, and returned soon . This suit has been fixed for filing W.S. on 19-12-1953.

Yours faithfully,

D.C.P.Kanara.

REGISTERED
GAL DEPARTMENT
No. 29981
9/12/53

Submitted.

The draft-W.S received with U.D.C.P. Kanara's letter overleaf has been examined and it appears to be in order. The same may therefore be approved and U.D.C.P, Kanara may be informed accordingly

15/12

Sol(G.L) 15/12

15/12

In the Court of the Civil Judge, S.Dn.,Karwar.

13

O.S.No. 100-1953.

Mrs. Laxmibai ... Plff .

Vs.

1. Mulla Hussein.
2. Government of Bombay. Defts.

Written statement of deft: No.2:-

The plaintiff is the owner of S.No.65/5 and has a residential house built in it. The adjoining plot S.No.65/4 belongs to Radhabai and next to it is S.No.65/3 belonging to deft.No.1. The Kali River is on the North. The general slope of the land is towards the North. The Sea is on the West. Rain water had accumulated pass from plff's land to the Northen plot of Radhabai and thence to deftxx No.1's land to the North. These are garden lands. There was an opening in the Western side of deft No.1's land and the water thus accumulated in deft No.1's land used to pass through this outlet kept in the Jail Compound wall adjoining deftxxdeft No.1's land. This water used to flow into the jail compound area along the Western wall of plff's land. From there it used to flow towards North and join a canal therefrom. In the year 1950 deft No.1 put-in a compound wall from East to West of his land This had the effect of blocking the said water course with the result that the plff's said land as well as the lands lying to the South were inundated with rain water and the houses in the plots were in danger. In order to avoid any damage being caused to the compound wall of the Jail owing to the pressure of the rain water the Jail Authorities made a temporary opening in the wall but that was closed as soon as the Monsoon was over. Then in June 1951 at the request of the plff's husband and few of the residents of the locality the said passage was again opened under the orders from the Inspector of General of Prisons who informed the plff's husband that the said action was taken without prejudice to the Government rights and that the parties concerned should go to the Court for redress of their grievance against defendant No.1. Thereafter plff's husband caused a notice to be served This was done to avoid any damage being

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caused to the compound wall of the jail owing to the pressure of the rain water accumulated in the plff's land and of her neighbours and also for the temporary convenience of all persons concerned. The pl deft No.2 is not concerned with the other allegations made in paras 3 and 4.

The averment of the plaintiff in para 5 of the plaint as to the Inspector General of Prisons having by his letter dated 14-4-1952 informed the plaintiff that Government had permitted to be made a formal defendant is not correct. The plff's pleader was only informed by this letter that Government order for such permission was awiated. Thereafter the I.G.P. was informed by Government under their letter No.9160/6 dated 25-4-1952 that if plff's husband wanted to join the State of Bombay as a party he might do so but no permission was required for the same. A copy of this letter was sent to plff's pleader. The plff was never informed that Govt . had given permission as is now alleged by the plff.

The plaint does not disclose any cause of action against Government nor is any specific relief claimed against deft No.2. Deft No.2 has been added as a party on the ground of its being vitally interested in the water course and the compound wall of the jail mentioned in the plaint. This is no proper ground for impleading Government as a deft in the suit. Govt is neither a necessary nor a proper party to the suit. It has been wrongly joined as a deft. Hence its costs should be ordered to be paid by the plff.

In the notice dated 19-9-1952 issued under section 80 C.P.C. the cause of action has not been stated nor any redress of grievance claimed from the Government. The notice is therefore defective.

As the cause of action is said to have arisen on 1-6-1950 and since the easement right has not been in use during the rainy seasons of 1950-51 and 1951-52 the present suit brought after 2 years after the cessation of that right is not maintenable. It is not in time.

No. 25417/B 17 M

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 16 - 12 - 1953.

C S No 100 of 1953

Memorandum.

With reference to his letter No. 8/0 dated the 4.12.53 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, Karwar is informed that ~~two copies~~ of the ~~revised~~ approved draft ~~are~~ forwarded ~~herewith~~ My min is approved

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Karwar, Karwar

KUP.
29/1.

Submitted for signals
16/12

SS

Issued
16/12

From:

The District Government Pleader, Kanara, Karwar.

19/A

To

The Remembrancer of Legal Affairs, Bombay.

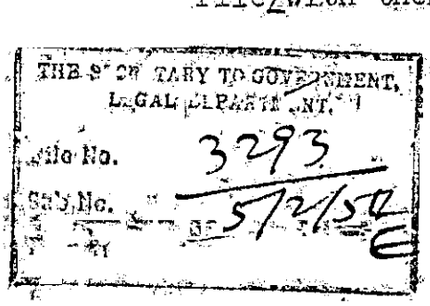
No. 53 of 1954. Karwar, dated 1st February 1954.

Sir,

In O.S.No.100-1953 filed by Shrimati Laxmibai Warle against 1.Mulla Hussein (2) Government of Bombay I had received one bundle of papers forwarded by you with your letter No.23831/E dated 23rd November 1953. All these papers are typed copies of the relevant documents. I had been asked to draft the written statement on the lines of the brief, a typed copy of which had been sent to me with this letter. I drafted the written statement and forwarded the same to you with my letter No.810-1953 dated 4-12-1953. You have approved this draft written statement by your letter No.25417/E dated 16-12-1953. The written statement has to be filed on 19-2-1954. But I will require the file of original papers for production of the relevant documents in this suit. The papers so far sent are only typed copies. I therefore request you to send me the original papers, if they are in your office. Copies of this letter have been forwarded to the Inspector General of Prisons State of Bombay Poona (2) The Jailor Sub-Jail Karwar and (3) The Collector of Kanara with a request that if the original file is with them, all the papers should be sent to me immediately.

Yours faithfully,

Dist.Govt.Pl.Kanara.



LD

Secretary

He may be informed that there are no pps in this office and required pps may be obtained from the Inspector General of Prisons.

Sd (M) 8/2

No. 26851/L 27 31

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 1/81—December 1955.

Subject:- Civil Suit No. 100 of 1953.
Smt. Laxmibai Narayan Wagle
vs.
The State of Bombay and Another.

MEMORANDUM.

With reference to the subject noted above, the District Government Pleader, Karwar is requested to state ~~that~~ why he has not yet forwarded an uncertified copy of judgment when the suit is decided on 31st August 1955. He is, therefore, requested to forward the same immediately.

OC
for Remembrancer of Legal Affairs.

To
The District Government Pleader,
Karwar.

BM.
1.12.

Submitted & signed
1/12

To

The Home Department,
The Inspector-General of Prisons, State of Bombay, Poona,
The Collector of Kanara,
The District Government Pleader, Kanara, Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1954.

Copy forwarded for information and guidance to

Subject. after me
file no. S. Kanara/54 (mm)
5/1/55
S S 7/2
5/1

25 7

KANARA CIVIL SUIT No. 100 OF 1953.

Chronological Statement of Facts.

The plaintiff is the owner of a plot bearing Survey No. 65/5, situated in Kajubag, Karwar, and in which she has built a house. Adjoining this plot and to the north of it, there is a plot bearing Survey No. 65/4 belonging to one Shrimati Radhabai Sohoni and beyond that to the North there is a plot bearing Survey No. 65/3 belonging to defendant No. 1 and to the West of these plots there is the compound wall of the Sub-Jail at Karwar. A sketch showing the plots belonging to the aforesaid persons and the wall of the Jail compound etc. will be found at p. 73 in the case papers. In the rainy season the rain water passes from Survey No. 65/5 through Survey No. 65/4 to Survey No. 65/3 and thence taking its course to the West it passes on through the outlet kept in the jail compound wall to the jail fields from where it flows through a canal on to the sea side. In the year 1950, defendant No. 1 put a compound wall from East to the West and this had the effect of blocking the rain water with the result that the plaintiff's land as well as the lands lying to the south thereof were inundated with rain water. In order to avoid any damage being caused to the compound wall of the jail owing to the pressure of the rain water accumulated in the aforesaid land the jail authorities made another temporary opening on the wall but that was closed as soon as the monsoon was over. Then in June of 1951 at the request of the plaintiff's husband and a few other residents of the locality, the said passage was again opened for a fortnight under orders from the Ispector-General of Prisons who informed the plaintiff's husband that the said action was taken without prejudice to the Government rights and that the parties concerned should go to Court for redress of their grievance against defendant No. 1, since the jail authorities could not allow their crop to be affected. Thereafter the plaintiff's husband caused a notice to be served upon defendant No. 1 calling upon him to inform him within five days of the receipt thereof whether he was willing to allow the rain water to run through its usual course or not, and then after some correspondence carried on by the plaintiff's husband with the Inspector-General of Prisons and the Government with a view to ascertaining whether Government was willing to join him as a co-plaintiff or wanted to be joined as a formal co-defendant in the suit proposed to be filed by him against defendant No. 1, the plaintiff gave notice of suit to Government on 19th September 1952 and filed the present suit both against defendant No. 1 and Government on 18th April 1953 for a declaration that she is entitled, by virtue of ancient and immemorial usage to discharge rain water from her land through Mrs. Sohoni's plot on to the plot of defendant No. 1, and then onwards through the outlet in the jail compound into the jail fields, and for a permanent injunction restraining defendant No. 1 from obstructing her in any way in the exercise of her right to discharge rain water in the aforesaid manner and certain other reliefs. But no specific relief is claimed against the Government.

Grounds of Defence.

The plaint does not disclose any cause of action against Government nor is any specific relief claimed against Government. The Government has been added as a party on the ground of its being vitally interested in the water course and the compound wall of the Jail mentioned in the plaint. This is no proper ground for impleading Government as a defendant in the suit. It should, therefore be contended that Government is neither a necessary nor a proper party to the suit, and that it has been wrongly joined as a defendant.

With regard to the averment of the plaintiff in paragraph 3 of the plaint as to Government-Jail authorities having opened a new outlet in June 1951 at the request of the plaintiff and her neighbours, it should be urged that it was opened to avoid any damage being caused to the compound wall of the jail owing to the pressure of the rain water accumulated in the lands of the plaintiff and her neighbours and also for the temporary convenience of these persons.

The averment of the plaintiff in paragraph 5 of the plaint as to the Inspector-General of Prisons having by his letter, dated 14th April 1952, informed the plaintiff that Government had permitted the department concerned to be made a formal defendant is not correct and it should be denied. A copy of the letter referred to by the plaintiff is at p. 59 in the case papers. On going through it, it will appear that by this letter the plaintiff's pleader was only informed by the Inspector-General of Prisons that Government's order for such permission were awaited. Thereafter the Inspector-General of Prisons was informed by Government under their letter in H. D. No. 9160/6, dated 25th April 1952 (copy at p. 67 in the case papers) that if Shri Wagle (plaintiff's husband) wanted to join the State of Bombay as a party defendant, he might do so and no permission was required for the same. A copy of this letter was forwarded by the Inspector-General of Prisons to Shri Wagle's pleader. From this it will be clear that the plaintiff was never informed by the Inspector-General of Prisons that Government had given the permission as alleged by the plaintiff.

For the above reasons, it should be urged that the plaintiff's suit, so far as this defendant is concerned fails and it may be dismissed with costs.

S. Kanara / 54 / New / 6/11/53

Suits :

Kanara.

For a declaration that she is entitled by virtue of ancient and immemorial right to discharge rain water from her land bearing Survey No. 65/5 through one Mrs. Radhabai Sohoni's plot No. 65/4 through the outlet in the jail compound adjoining defendant No. 1's plot into the jail fields.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 10144/E.

Bombay Castle, 20th April 1954.

Letter from the Inspector-General of Prisons, State of Bombay, Poona, No. BLD/25, dated the 18th June 1953—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KARWAR.

Civil Suit No. 100 of 1953.

Smt. Lakshmibai Narayan Wagle ... ... Plaintiff ;

versus

The State of Bombay and another ... ... Defendants.

Memorandum to the District Government Pleader, Kanara, No. 23531/E, dated the 23rd November 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

L Leg. H 94—1

[P.T.O.

To

*The Home Department,
*The Inspector-General of Prisons, State of Bombay, Poona,
*The Collector of Kanara,
The District Government Pleader, Kanara, Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1954.

Copy forwarded for information and guidance to

Subject after issue
file no. S. Kanara/54
5/1/55
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31

In the Court of the Civil Judge,

Senior Division, Karwar.

O.S.No.100-1953. Exh.71

Pleaders.

Srhi D.M.Kulkarni. Shrimati Laxmibai Narayan Wagle, 67, household work, reisding at Karwar ... Plff.

against

Shri M.R.Kamat. 1.Shri Mulla Hussein Mulla Usman, 55 Muslim, merchant, reisding at Karwar.

Dist.Govt.Pleader. 2-The Government of the Bombay State, Bombay. ... Defts.

Claim - Rs.5/- for court fee stamp; Co.9.

In this suit the Plff claims a natural right for discharging the rain water from her plot through Radhabai Sohni's plot on to Deft 1's plot and then through the outlet in the jail compound adjoining Deft 1's plot into the jail fields down below belonging to Deft 2. The Plff further prays for perpetual injunction and mandatory injunction for safeguarding this right. The allegations made in the plaint are as follows.

Plff is a woman. She is the owner of plot bearing S.No.65/5 in which is her residential house. Adjoining this plot to the north is Radhabai Sohni's plot bearing S.No.65/4 in which stands Rachabai's residential house and further adjoining Radhabai's Sohni's plot to the north is Deft 1's plot bearing S.No.65/3 in which stands Deft 1's residential house. To the west of all these three plots, stands the Govt jail compound wall (the Govt is Deft 2 in this suit). These plots slope south-north and also east-west.

In the rainy season from times immemorial the rain water used to pass from the southern side of Plff's plot through Radhabai Sohni's plot on to S.No.65/3 belonging to Deft 1 and from thence used to take its course to the west through the outlet provided in the jail compound wall adjoining Deft 1's plot to the jail fields. About the month of May of the year 1950, Deft 1 put up a compound wall from east to west on his plot and this had the effect of blocking the said rain water course in June 1950, with the result

that the Plff's said plot as well as the plots lying to the south became inundated with rain water and the residential houses of the Plff and others stood in great danger of being affected by this rain water. The Plff had drawn Deft 1's notice to this fact while he was constructing the stone wall But Deft 1 then gave her an assurance that he would arrange for keeping an outlet for the said water course in his compound wall which promise he failed to keep. Thereafter the Plff approached the Govt Jail authorities and they gave a temporary outlet in the jail compound wall against her plot. But they closed it in June 1951. This resulted in the stagnation of rain water andthe consequent destruction caused by it to the plantations made in Plff's compound and in the compounds of the neighbours. It also created dampness in their houses causing harm to their health and property.

Thereafter in November 1951 a legal notice was given to Deft 1 calling upon him to facilitate the running of the rain water. ut he did not comply with it. Hence the suit.

The Govt has been made only a formal party in this suit and no relief is claimed against it. Plff makes out the following prayers namely:-

1. She in the first instacne prays for a declaration to be made in this behalf in her favour;

2. She next prays for a perpetual injunction restraining Deft 1 from obstructing in any way Plff's exercising the said right to discharge the rain water in the said manner.

3. She further prays for a mandatory injunction ordering Deft 1 to give a sufficiently wide outlet in his compound wall for the rain water to be discharged from Plff's said plot rhrough Mrs.Radhabai's adjoining plot on to Deft 1's plot and to remove the obstruction that he has put up in the way of the said water course.

2. Deft 1 by his W.S. Exh.25 resists Plff's suit on the following grounds. He denies the existence of the water course claimed by Plff and makes out the following case. The three plots are bounded on the east by Karwar Kodibag road and on the west by the Jail compound wall and further these three plots originally were of the same level. The level

No.1126 of 1955.
Karwar, 22.12.1955.

From:The District Government Pleader,
Kanara, Karwar.

To
The Remembrancer of Legal Affairs,
Bombay.

Sir,

With reference to your letter No.26851/E, dated the 1st inst. I am sending herewith an uncertified copy of the judgment in Civil Suit No.100-1953 filed by Smt. Laxmibai Narayan Wagle against the State of Bombay, which was decided on 30.8.1955.

I am also sending herewith uncertified copy of judgment in Civil Suit No.149-1955 filed by Shri R.K.Boloor against the State of Bombay, which was decided on 12.8.'55.

Yours faithfully,

Sd/-
Asstt.D.G.P.
for District Government Pleader,
Kanara, Karwar.

of the Karwar Kodibag road formerly was on a lower level to the east and further the Jail fields down below the compound were also on lower level. So the rain water falling on these plots partly used to flow towards the road and partly towards the jail fields by percolation through the jail compound walls. But within the last few years the entire situation became changed due to the raising of the level of the Karwar Kodibag road which in 1938 was metalled and tarred and further the Jail authorities also raised the level of their lands by more than 4'. Further on Plff also raised the level of her plot by about 2' As a result of all these raisings made in the levels the outlets for the rain water became clogged and therefore the inundation. Deft 1 next submits that he did put up a wall on his plot as alleged by Plff but he states that he put it up in the year 1949 and he further states that he did not make any such promise to the Plff while putting up the wall nor did Plff make any protest to him in that behalf. According to Deft 1 the Plff's real grievance was against the Jail authorities but she having failed to get any relief at their hands had chosen to try her hand at getting this passage over his plot. In this connection he further submits that Plff and Deft 2 were colluding with each other to his detriment. He next submits that the suit was barred by limitation as Plff did not bring this suit within 2 years after the alleged obstruction. He further submits that Plff had no right to sue this Deft. According to him he could be only sued by Radhabai Sohni who is his immediate neighbour and not by this Plff. In this connection he further submits that Radhabai Sohni was a necessary party to the suit. Lastly he contends that the right claimed by Plff was not at all a natural right. For all these reasons he submits that Plff's suit should be dismissed with costs.

3. The Govt which is Deft 2 in this case, has put in its W.S. at Exh.23 through the Govt pleader. It practically supports the claim made by the Plff but resists it on tech-

nical grounds. It contends that the Govt was not a necessary party to the suit, not even as a formal party and that further it had never given its consent to be added as party. It next contends that the Plff did not disclose any cause of action against Govt nor was any specific relief claimed against it and hence the notice given under Sec.80 C.P.Code on 19-9-1952 was bad and the suit therefore was not maintainable. It further puts forth a similar plea as made by Deft 1 regarding the plea of limitation. For all these reasons it submits that it should be awarded its costs of the suit.

4. The following issues were set down for hearing at Exh.37:-

1. Does Plff prove that he is entitled to the natural right to discharge water from her land through the adjoining plot of the Deft 3 on to the plot of Deft 1 as stated in the plaint ?
2. Does the Plff further prove that the right is immemorial and customary ?
3. Is the suit barred by time ?
4. Is the Plff competent to file the suit against Deft 1 ?
5. Is the Plff entitled to the declaration and injunction ?
6. Is Deft 2 a necessary and proper party ? If not, what order as to costs ?
7) What reliefs ?
8. What order ?

Findings.

1) No. 2) No. 3) No. 4) Yes. 5) No.
6) Deft 2 is a formal party; it is not entitled to any costs.
7) & 8) As per order.

Reasons.

6. Before entering into the merits of the case I feel it obligatory to say a word about an irregularity which has crept into this case. After Deft 1 put in his W.S. wherein he raised a contention that Radhabai Sohni was a neces-

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sary party to the suit, Plff's pleader tried to amend the plaint by making an application for adding Radhabai Sohni as party Deft to the suit (Vide Exh.29 his application). On this application my predecessor Mr.Chaugule issued a show cause notice to Radhabai Sohni as to why she should not be added as party Deft. Radhabai Sohni did not put in appearance to this notice. But somehow through mistake it was imagined that Radhabai Sohni had already been made a party and she had remained absent inspite of suit summons. As a result of this mistake I even passed an exparte order against Radhabai treating her as Deft 3. This mistake was not noticed by any body in time and it was all along taken for granted that Radhabai was there as Deft 3. The hearing was done on that assumption and the arguments were also addressed on that assumption. But now at the time of writing judgment when I went through the record I found that in fact no order had been passed on the application,Exh.29 made by Plff's pleader and the whole thing was a terrible mistake, for which I feel very much sorry. But my only consolation is that this mistake does not in any way affect plff's case. So I do not think there is any necessity now of reopening the trial by adding Radhabai as a regular party. However, evidence has been recorded in this case treating Radhabai as party Deft 3. So wherever Deft 3 appears on record it should be taken to mean that it refers to Radhabai only. With these remarks I will proceed to consider the case on its merits.

7. The right claimed in this suit is a natural right arising out of geographical configuration of the properties involved herein. Plff is the owner of plot S.No.65/5. Adjacent to this plot to the north is Radhabai Sohni's plot bearing S.No.65/4 and adjacent to Radhabai's plot to its north is Deft 1's plot bearing S.No.65/3. In all these three plots there are residential houses. All these plots to their west are bounded by the jail compound wall and

behind this jail compound are the jail lands which admittedly are on a lower level than these plots. The frontage of this plot wh ch faces east is bounded by the Karwar-Kodibag road which admittedly is on a higher level than these plots. Plff's husband Mr.N.P.Wagle states that these plots slope south-north and also east-west, that is; there is a slope from Plff's plot towards Deft 1's plot and also there is a slope from the Karwar Kodibag road to the jail compound wall.

8. It is now the case of Plff that rain water falling into Plff's plot and also received by it from the higher level plots to the south was passing along the jail compound wall to Radhabai Sohni's plot and then to Deft 1's plot and from there through an outlet made in the jail compound wall used to flow down into the jail lands. This right according to Plff is existing since time immemorial. She now complains that in about June, 1950 Deft 1 built a compound wall th the west on the southern side of his plot that is on the boundary interveining his and Radhabai Sohni's plots and thereby caused the obstruction to the free passage of water, with the result that the water became clogged in Plff's and Radhabai Sohni's compound affecting adversely the health of the residents as also the buildings standing therein.

9. But the case made out by Plff seems to be very much inconsistent with the previous stand taken by by her husband on her behalf with the jail authorities, regarding this matter. In June 1951 Plff's husband along with some other residents of the locality sent up a fairly long mamorial to the Inspector General of Prisons regarding the blockage of water (Vide Exh.51) There in the signatories made out a case more against the jail authorities than against Deft 1. The memorial begins with these significant words:

> "We, the undersigned residents of Kajubag, Karwar living living on the eastern side of the boundary of the jail compound, Karwar feel obliged to approach you under circumstances of imminent and great danger to lives and dwelling houses etc. by an act of the Karwar Subjailor who knowingly

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> has raised the level of the ground adjoining our compound and has also closed the passages of the rain water flowing down from our compounds and road side gutters into the paddy fields adjoining them at a lower level.

Now mark the words beginning with "by an act of Karwar sub-jailor who knowingly raised the level of the ground etc." From this it is clear that Plff's husband and the other residents of the locality when they made the application were more aggrieved by the action of the Karwar Sub-jailor who raised the level of the ground than by the act of the Deft 1 who built the compound wall. The words marked above also reveal that the water from the compounds of Plff and others was flowing directly down their compounds into the paddy fields of the jail compound adjoining the jail compound wall.

If that was so, how can the present case made out by the Plff that the water used to flow along the compound wall into Deft 1's plot and from thence through the outlet made in the compound wall down below to the jail fields etc. be accepted ? This is obviously an improvement now made. Further in the memorial it is again stated thus:

> "This year during April-May 1951 in order to increase the area of the fields the jail department ur under the supervision of the sub-jailor started work of excavating earth from high earth heaps and and other high places and put the earth by the side of the compound wall against S.No.65 which contains several plots with houses and compounds and thus not only raised the level by about 1 to 2 feet but also closed the outlets made in the compound wall of Rao Saheb N.P.Wagle last year, all the while promising to give an outlet and passage to water later"

From this passage it becomes again clear that the immediate grievance of Plff's husband Mr.N.P.Wagle and the other residents was against the action of the Jail authorities for increasing the level of the fields down below the putting earth against the compound wall which in effect blocked the passage of rain waterwhich used to percolate through holes and passages made in the compound wall.

10. In the mrmorial no doubt there is also a hint of the water flowing along the compound wall down into Deft 1's plot. But that passage as mentioned therein did not

stop at Deft 1's plot only. It went further on to the end of all the residential buildings to the road gutter leading again to jail fields. Here again, the jail authorities it is complained practically blocked this gutter by erecting a stone compound wall. So as can be seen from the memorial the right of letting down the rain water is primarily claimed against the fields down below the compounds of Plff's and the other residents and only for the excess water the hint is made about the passage of it along the compound wall until the gutter which again was blocked by the jail authorites. Thus the main tenor of the memorial is a grievance against the jail authorities for their actions in preventing the exercise of the rights of the residents and not against the action of Deft 1.

11. The Jail authorities after receipt of this memorial gave immediate relief to the residents which can be found from Plff's husband's letter Exh.53 written to the Inspector General, wherein he states that the jail auth rities had reopened the outlets of the compound wall in their garden and dug out a passage through the newly raised ground and allowed the rain water to pass through it into the fields. Thereafter it seems, the Jail authorities, found to their chagrin too many holes made in their compound walls the last of which was the one made by Deft 1 in his compound wall. They then took advantage of this last hole and gave a suggestion to Mr.N.P. Wagle to pass his water along that hole. That becomes clear from the communication Exh.56 made by the Inspector General of Prisons on 12-6-1951. But Mr.Wagle it seems was not convinced about the correctness and validity of the suggestion made by the Inspector General of Prisons that he should pursue his claim against Deft 1 for getting the necessary relief. This is disclosed by Exh.57 the letter written by Wagle to Inspector General of Prisons on 21-7-1951. He begins this lette with these significant words -

" . . . . . there is no town planning act applicable to the town and many owners of the plots being away from their homes to earn their livelihood it was very difficult where different parties are concerned for a common right to take action. Owing to this the question becomes complicated and you can see from the facts below mentioned that there are some legal as well as practical difficulties in proceeding immediately against Mulla Hussein (Deft 1).

He then proceeds thus:

From De.Wagh's house to Shri Mulla Hussein's house there are the four plots Nos.12 to 15 in which 7 families are residing at present and those are mainly concerned with the passage of water as the Maidan ground is directly opposite to these plots. When Maidan ground was in level with the garden lands naturally the water used to pass by percolation as well as by free flow towards the North from different compounds including that of Shri Mulla Hussein into the fields. It used to flow right up to the end bordering the jail approach road.

Some years ago (about 7-8- years) part of Mulla Hussein's plot No.16B was sold to Shri Shanata Kamat who put up stone walls on both sides east to w west and since then the water from our side of plots passed from an outlet in the jail compound wall against Mulla Husseinls garden into the fields"

12. This shows that the outlet through which now Plff seeks to let out the water was not there since time immemorial as made out by Plff in the plaint, but came first into being about 7-8 years back. It is also Deft's case that he force-opened this outlet recently. The tenor of the letter shows that the water used to flow along the jail compound wall right upto the end of it till the jail approach road and that it also used to percolate through the jail compound wall down into the jail fields below. Let me now quote the further part of the letter:

"The fields since last year are being cultivated by the jail department and when there was inundation of water in our gardenslast year, on request to the jailor he was kind enough to give an outlet for the water to pass through my garden into the fields. But things came to a crisis this year when the Jail department not only raised the level of the Maidan ground against the garden plot Nos.12-15 but also closed the outlet for water given last year. Sand removed from other places of high level for extension of fields and also sand from high level fields was put on the Maidan which is turned into a cocoanut garden. This work of excavating the sand and filling the Maidan ground was going for over 2 months or so when ultimately the outlet given last year was closed at about the end of May this year. I then submitted an application to you on June 6th 1951". (Exh.57).

Thus it can be seen that the immediate cause for Plff's grievance was the raising of the level of the garden lands by the Jail authorities and putting sand against the compound wall so as to prevent any percolation of water through it. In this letter and even in the previous letter Plff's husband Mr.Wagle nowhere makes out any grievance against Deft 1. It can be seen all along he had been complaining about the conduct of the jail authorities and had been making out a case that the major portion of the water used to percolate down into the fields of the compound wall and only the excess part used to flow along the compound wall. So the main culprit according to the Plff's husband, in the first instance was the Jail department for having brought about this unwholesome situation. The Plff's present case therefore against Deft 1 loses much of its force.

13. The correspondence noted above made by Plff's husband with the Inspector General of Prisons brings out the following important facts, namely;

1. That the water from these plots used to flow directly from the compounds of the respective plots into the Jail fields by percolation and also through the outlets the Jail compound wall, and any excess used to ~~xhexJaix~~ flow along the Jail compound wall to the Jail approach road and into the gutter, from thence again to the Jail lands below;

2. that the present inundation in Plff's compound was mainly due to the action of the Jail authorities in raising the level of the lands and putting sand and earth against the Jail compound, by which action all the water exits through the compound wall became clogged;

3. that the jail authorities had promised to give reliefs for exits while making these alterations in the lands but they failed to keep it up; and

4. that the outlet made in Mulla Hessein's compound wall came about only 7-8 years back when Shanta Kamat the adjacent owner to Deft 1 erected a compound wall to his plot.

These facts militate very much against the case now made out by Plff against Deft 1 that the water naturally used to flow along the compound wall through the outlet in Deft 1's land, It is plain even according to the case made out by Plff that the tendency of water was to flow directly down into Jail

fields which was blocked in the first instance by the erection of the compound wall by the Jail authorities. By the erection of this compound wall, the water which otherwise used to flow down began to career along the compound wall down the north. But even then since the compound wall came against the direct tendency of the water flow it had to yield to the water pressure by giving it exits and outlets and these were stopped by the Jail authorities when they raised the level of their lands and blocked the exits and outlets by putting sand and earth against their compound wall. This in substance is the picture that we get of the whole situation as it stands drawn by Plff's husband's letters, and the colours for this pictures are provided by the evidence led in this case.

14. We may beging with Plff's husband's own description of the geographical configuration of the entire site. He says that it slopes south north and also east-west. But it is admitted that the slope towards west is steeper than the slope towards north. In this situation water falling on the higher slope can never flow directly to the north. The steeper slope to the west is bound to deflect its flow towards it. So the flow till naturally take a north west direction leaning heavily towards west. This can also be seen in the sketch Exh.46 drawn by the commissioner in this suit. The water course is marked by him by Marathi letters* It clearly bears out my above made observation that the tendency of the water flow would be north west leaving heavily on the west. When this was so it is hard to imagine the case made out by the Plff that the water from her plot used to flow down into the neighbouring plots below. As the situation shows it could never flow in all the plots. It could at the most have flown into the adjacent plot of Radhabai Sohni or at the most it would have touched a part of Deft 1's plot which is adjacent to Radhabai Sohni's plot. But it could have never careered directly towards north. Plff's,

sic

witness Mr.Ganpat Telang Exh.65 who it is said resided in Plff's house about 50 years back, no doubt states that the water used to pass directly northwards flowing into Deft 1's compound. But with due respect to Mr.Telang it is hard to accept his evidence on the point in view of the situation noted above.

15. More reliable evidence on this point is contained in the evidence given by Mahammad Saliya Exh.68 who is a witness for Deft 1. This man served in the said Karwar Jail for nearly 30 years i.e. from 1902-1932, Further during this tenure of his he used to personally supervise the cultivation work of the Jail fields and as such his evidence is much more valuable on this point and indeed we get from his evidence a very true picture of the whole situation. He states that the level of the Jail fields was lower by 1½ feet than the above-mentioned plots and that water formerly used to flow down directly into the Jail fields from these plots. The witness further states that prior to 1912 there was only a fence in place of the present jail compound wall and through this fence the water used to flow down without any hindrance and the present jail compound wall was first built about the year 1912 and since then though the water course was deflected still it used to enter the jail compound wall by percolation through it. So we get from his evidence that the natural flow of the water first became deflected in the year 1912 by the erection of the jail compound wall but even then the water still used to persist in its flow towards the Jail fields by percolating through the compound wall, This picture brought out by Saliya exactly fits in with the prepresentations made by Plff's husband in his letters to the Inspector General of Prisons. The evidence given by the other witnesses on this point is not of much consequence. So I need not dilate upon it.

16. I would now turn to the law on the point. Natural rights arise out of the geographical configuration of proper-

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ties and they are inherent in the property itself. They are not created by prescription or grant nor are they lost by non-user. Natural right as the one claimed in this suit is confined to the water which naturally comes to reses in or falls on the surface and not brought on to the surgace by artificial means. The owner of the higher land is entitled to let the water run off into the lower land by whatever means nature intended but he cannot allow it to pass on the lower land in any manner other than the one in which it originally passed. If the manner of passing is changed it assumes an artivicial character andcannot any more be called with propriety a natural right. But if the changes are made by nature itself they cannot affect the natural right. The natural right is affected only when it is affected by man made changes. Our case on hand unfortunately illustrates a case of man-made change and not a natural change. The evidence discussed above clearly proves it. But for the erection of the compound wall by the Jail authorities the flow of the water could never have been deflected towards north along the compound wall into the down below plots. On the other hand we see that even inspite of the building of the wall the water used to force through it by means of percolation and outlets which unfortunately was also stopped by the jail authorities about 2-3 years back. So being the Plff in this case cannot with propriety claim a natural right for passing the water on to Deft 1's land along the compound wall. There is also no evidence in this case that the water used to flow from time immemorial along the compound wall through the outlet against Deft 1's plot as alleged by Plff and it stands disreputed by the correspondence of Plff's own husband on the point and also by the evidence given by Mahommad Saliya. In my opinion the Plff or rather the Plff's husband was very unwise to leave off his stand against the Jail authorities and direct his attention towards Deft 1. This change of

front was presumably made by the suggestions made by the Inspector General of Prisons. But I should say he chose a very wrong target for his attack. Even in this case while claiming the reliefs against the Deft 1 he could have very well alternatively claimed them against the Jail authorities. But unfortunately he has chosen to make out only a formal party without claiming any reliefs against it. The Jail authorities now do no doubt try to lend support to Plff's case but at the same time they are shy of coming into the open, by which I mean they have not cared to lend any effective support to his case by entering the witness box. They perhaps are very much interested in lending such support to Plff's case; because Plff's success against Deft 1 would mean a great relief to them. So though I sympathise very much with Plff's lot I cannot grant in her favour that the right which she claims against Deft 1 is a natural right and therefore I cannot grant any relief to her against Deft 1. The reliefs sought by Plff in this suit are only on the basis of a natural right and not on the basis of an easement by re-prescription. But in view of my finding that there is no case for upholding her claim on the basis of a natural right, I must perforce dismiss the suit. That disposes of issues 1 and 2.

17. The other contentions which remain for consideration are the contentions made by Defts 1 and 2 in this case. Both of them in the first instance plead the bar of limitation to the suit. But this contention has no substance in it and it was also not pressed at the time of arguments. As the law stands there is no limitation for claiming a natural right and the suit having been based upon a natural right is not affected by any limitation.

18. It is next contended by Deft 1 that he could be sued only by Radhabai Sohani his immediate neighbour above him and not by Plff and that further Radhabai Sohni was a necessary party to the suit. So far as the latter part of the

contention about Radhabai's being a necessary party to the suit goes, I have already noted the unfortunate mistake made by this court in this connection. After this contention, the Plff did no doubt apply to make Radhabai Sohani as party Deft 3. The court issued a show cause notice to Radhabai Sohani as to why she should not be made a party, but later on came to misconstrue this notice as a suit summons to her and went on the wrong footing that she had already been made a party and had failed to appear in response to the suit summons and so treated her as ex-parte. The result in effect is that Radhabai is not at all a party before this court though in the record she has been treated as party Deft 3. But this mistake does not in any way affect Plff's suit for it is ruled in Natabar Sarmal V. Krishnachandra A.I.R.1942 Calcutta, 201 that in a suit of such type by Plff although other persons have not invaded the Plff's rights the Plff is not bound to proceed against them either by impleading them directly as Defts or by moulding the suit on a representative basis so as to include them in effect within its scope. The Plff in this case does not allege that Radhabai Sohani has in any way invaded her rights. So in view of the ruling quoted above it was not incumbent upon Plff to make her a party. The ruling also disposes of the first part of Deft 1's contention that he could be sued by Radhabai Sohani alone and not by Plff 1 as she was not the immediate neighbour above him. Plff according to this ruling can sue Deft 1 in so far as she complains that it is he who has invaded her rights and not Radhabai Sohani. The Pleader for Deft 1 also conceded that his contention in this behalf could not be sustained. I therefore rule out the contention.

19. We now come to Deft 2's contention that is, the contention made by the Govt that it was not a necessary party to the suit and therefore its cost should be awarded. The Plff of course does not claim any relief against Govt in this suit. She has stated in the plaint itself that

the Govt was only a formal party. Fnnther it is clear from the correspondence that the Govt itself did not object to its being made a formal party. That being so, I fail to understand how Government can claim its costs in this suit. Even supposing that the Govt did not give any such tacit consent for its being made a formal party, still it is clear from the plaint itself that the Plff made Govt merely a formal party without claiming any relief against it. So being, there was no necessity for Govt to put in appearance in this suit and put in any contention. I therefore disallow Govt's plea in this behalf.

20. There remains still another contention regarding the validity or other wise of the notice given by Plff against the Govt. No formal issue in this behalf has been framed as it was not sought by the Govt. But Deft 1 now tries to make capital out of this contention. Therefore I think it necessary to deal with it. The Govt called the notice bag on two grounds, viz. it did not disclose the cause of action against it and it did not contain any reliefs against it. Sec.80 C.P.C. states thus:

> "No suit shall be instituted against the Crown or against the Public Officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after notice in writing has been delivered to left at the office of ..... stating the cause of action, name, the description and place of residence of the Plff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left."

Now while considering the provisions of this section we must remember the following facts: The suit brought by Plff was not primarily against the Govt. The Govt was made only a formal party without any relief being claimed against it. The principal target of the suit is Deft 1 and the reliefs claimed are all against him. All these were clearly stated in the notice Exh.47 given by Plff on 19-9-1952 which admittedly was two months prior to the filing of this suit. So being the suit is strictly in accordance with the notice given by Plff. When

4-7-57

no cause of action arises against the Govt and when no reliefs were claimed against it there could not be any question of the notice containing these particulars. What was notified by the notice was that the Govt would be made a formal party and this has been complied with in this case. The section 80 C.P.C. nowhere forbids the making of Govt a formal party. All that it states it when any cause of action is made out against the Govt and when any reliefs are claimed against it they should be clearly stated in the notice. So I do not think there is any point in this contention. In fact ~~xxxxxxxx~~ the contention was not urged by the Govt itself. It was Deft 1 who tried to make capital out of it. The contention therefore loses all its force.

21. We have now disposed of all the contentions. But the suit, in view of my findings given on issues 1 and 2 cannot be sustained and therefore it will have to be dismissed

O r d e r.

Suit dismissed with costs of Deft 1.

Deft 2 to bear its own costs.

31st August 1955.

Sd.M.M.Shirkol,
Civil Judge,Senior Division.

1953

Suits:
Kanara.
For a declaration that she is entitled by virtue of ancient and immemorial right to discharge rain water from her land bearing Survey No.65/5 through one Mrs.Radhabai Sohoni's plot No.65/4 through the outlet in the jail compound adjoining defendant No.1's plot into the jail fields.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2-9264/55
Sachivalaya, Bombay, 30th December 1955.

Read Government Resolution, Legal Department No.10144/E dated the 20th April 1954.

Letter from the District Government Pleader, Karwar No.1126 dated the 22nd December 1955, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Karwar, on the 12th August 1955, when the following order was passed:-

In the Court of the Civil Judge (Senior Division)Karwar. Civil Suit No. 100 of 1953.	noted in the margin was decided by the Civil Judge, Senior Division, Karwar, on the
Smt. Lakshmibai Narayan Wagle... Plff.; versus The State of Bombay and Anr..... Defts.	

"Suit dismissed with costs of Deft.1. Deft. 2 to bear its own costs."

Letter from the District Government Pleader, Karwar No.1126, dated the 22nd December 1955, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

original
29/12
D.P.Shikhare,
Deputy Secretary to Government.

To

The Home Department,
The Inspector General of Prisons State of Bombay, Poona
The Collector of Kanara,
The District Government Pleader, Kanara.

Nair/- 28/12
Issued 28/12
Submitted for Signature
28/12
Supdt 29/12
D.S (Civil)